



Federal Communications Commission
Washington, D.C. 20554

October 22, 2013

DA 13-2034
Released: October 22, 2013

Guenter Marksteiner
47 Winnacunnet Road
Hampton, New Hampshire, 03824

Re: Forfeiture Order on Reconsideration,
WHDT-CD, Miami, Florida; WYDT-CA, Naples,
Florida, Fac. ID Nos. 9614, 25538
NAL/Acct. No. 201341420023

Dear Licensee:

Background. On September 23, 2013, the Video Division released a Forfeiture Order, DA 13-1943, in the above-captioned matter.¹ At the time of the issuance of the Forfeiture Order, the staff reviewing this matter had not received the Licensee's timely filed response to the Notice of Apparent Liability in this matter. In accordance with Commission Rule 1.108,² the Video Division hereby reconsiders the Forfeiture Order in light of the Licensee's response. However, the Video Division ultimately concludes, after careful review of the Licensee's response, that the Licensee is liable for a forfeiture of Twelve Thousand Dollars (\$12,000).

The factual findings and discussion included in the Forfeiture Order are incorporated by reference herein.³ The Licensee filed a timely response on August 9, 2013.

Discussion. In its response, the Licensee admits that "some [Children's Television Programming Reports] may not have been timely entered into the FCC's filing system" but blames that on the "inconsistent functioning of the FCC's electronic filing system."⁴

We reject the Licensee's assertion that the failure to file its Children's Television Programming Reports in a timely manner was caused by the FCC's electronic filing system. As an initial matter, it is the Licensee's responsibility to ensure that the reports are properly filed. Moreover, the Licensee has provided no verifiable evidence of the Commission's receipt of the reports in a timely manner. When a report is submitted properly through the Children's Television Programming Reports database, the reporting party receives a submission confirmation with a confirmation number and the date of the filing included. Licensees seeking to demonstrate that a report was properly filed have frequently submitted this confirmation page to confirm the filing.⁵ Because the Licensee has provided no such evidence, we have no basis to conclude that the reports, which are unquestionably listed in the FCC's database as having been received late, were in fact submitted in a timely manner. We therefore find no basis to conclude that the reports were filed in a timely manner.

The Licensee further argues that the forfeiture amount should be reduced because the children's programming aired on the two stations was identical and thus the forfeiture represents a "double penalty."

¹ *Guenter Marksteiner*, Forfeiture Order, DA 13-1943 (Sept. 23, 2013).

² 47 C.F.R. § 1.108.

³ *Guenter Marksteiner*, Forfeiture Order.

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") at 1.

⁵ *Carolina Rays, LLC*, Forfeiture Order, 28 FCC Rcd 10068 (Vid. Div. 2013).

The fact that the Licensee chose to broadcast identical programming on two separate stations does not reduce its liability for separate violations of the Commission's rules for each of its stations.⁶ Based on this argument, we find no basis to reduce the standard forfeiture amount for those separate violations.

Accordingly, **IT IS ORDERED ON RECONSIDERATION** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,⁷ Guenter Marksteiner SHALL FORFEIT to the United States the sum of twelve thousand dollars (\$12,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

In the event that the Licensee wishes to revert WHDT-CD and/or WYDT-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the station(s).⁸ Should the Licensee elect to revert the stations to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Sincerely,

Barbara A. Kreisman
Chief, Video Division, Media Bureau

cc:
Lauren Lynch Flick, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
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⁶ *Glen Iris Baptist School*, Forfeiture Order, 28 FCC Rcd 7466 (Vid. Div. 2013).

⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

⁸ *See* 47 C.F.R. § 73.6001(d).